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# IN THE
# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

**No. 71-565**

UNITED STATES OF AMERICA
*Appellant*

vs.

CHRISTIAN ECHOES NATIONAL MINISTRY, INC.
*Appellee*

**MOTION TO DISMISS**
**BRIEF IN SUPPORT OF MOTION TO DISMISS**
**MOTION TO AFFIRM**
**BRIEF IN SUPPORT OF MOTION TO AFFIRM**

LeROY BLACKSTOCK
CRAIG BLACKSTOCK
*Attorneys for Appellee*

Blackstock Joyce & Pollard
1304 Petroleum Club Building
Tulsa, Oklahoma 74119

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## MOTION TO DISMISS

Appellee, Christian Echoes National Ministry, Inc., respectfully moves that this Court dismiss this appeal filed by appellant, United States of America, for the reason that jurisdiction for appeal of the decision directly from the decision of a United States District Court properly lies with a Circuit Court of Appeals and not with this Court.

## MOTION TO AFFIRM

In the alternative, appellee, Christian Echoes National Ministry, Inc., respectfully moves that this Court affirm the

decision entered on June 24, 1971, by the United States District Court for the Northern District of Oklahoma for the reason that appellee is clearly entitled to judgment in its favor.

Respectfully submitted,

BLACKSTOCK JOYCE & POLLARD
By: LeROY BLACKSTOCK
*Attorneys for Appellee*

Blackstock Joyce & Pollard
1304 Petroleum Club Building
Tulsa, Oklahoma 74119

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## BRIEF IN SUPPORT OF APPELLEE'S MOTION TO DISMISS

Findings of Fact and Conclusions of Law of the District Court appear at pages 1a-32a of the Jurisdictional Statement and recite a definitive chronology of the trial court record.

Appellant (hereafter "Government") urges jurisdiction under 28 U.S.C. 1252. The sole question to be determined is whether the decision of the United States District Court held an Act of Congress unconstitutional.

Appellee's (hereafter "Christian Echoes") remarks are directed to pertinent jurisdictional arguments in Government's Jurisdictonal Statement.

Internal Revenue Service (hereafter "IRS") revoked Christian Echoes' tax exempt status alleging:

1. Christian Echoes was not operated exclusively for religious purposes;

2. Christian Echoes had engaged in substantial activity aimed at influencing legislation;

3. Christian Echoes had intervened in political campaigns on behalf of candidates for political office. (Jurisdictional Statement, pp. 7, 9)

The District Court reversed the ruling of IRS on all three points.

Government does not dispute the District Court's rejection of its first ground for revocation. Government concedes that Christian Echoes *was operated exclusively* for religious purposes during the years in question. (*Id.* at 9, Note 5.)

Government challenges only the District Court's rejection of IRS's second and third grounds for revocation.

Government argues that the District Court found §501 (c)(3) of the Internal Revenue Code of 1954 unconstitutional "as applied" to Christian Echoes because the District Court found that IRS may not determine religious activities are political and revoke tax exemption on that basis. Government reasons that the District Court reversed

the IRS revocation as an unconstitutional infringement on the free exercise of religion. (*Id.* at 9.)

Christian Echoes urges that since Government concedes Christian Echoes was operated exclusively for religious purposes during the years in question, both Government's challenge to the District Court's rejection of IRS's second and third grounds for revocation and Government's claim of jurisdiction in this Court are untenable. Christian Echoes urges that:

> 1. The pertinent exempt and nonexempt activities described in §501(c)(3) are mutually exclusive;
>
> 2. The District Court did not find §501(c)(3) unconstitutional as applied to Christian Echoes;
>
> 3. IRS administered §501(c)(3) against Christian Echoes in a manner unjustified by both the provisions of that section and the Treasury Regulations thereunder.

Reduced to its essentials, as concerns this appeal, §501(c)(3) defines exempt organizations as:

> (3) Corporations . . . organized and operated exclusively for religious . . . purposes . . ., no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

Government concedes Christian Echoes met the requirements of the following portion of the exemption statute:

> Corporations . . . organized and operated exclusively for religious . . . purposes . . . .

Government argues Christian Echoes disqualified for tax exemption by reason of engaging in prohibited activities under the following portion of the statute:

> . . . (N)o substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

The question to resolve is whether the two portions of the statute are mutually exclusive. If Christian Echoes is exclusively religious, can the remaining portion of the statute (concerning support of legislation and political candidates) apply?

Regulations authorized by 26 U.S.C. 7805 are interpretations of the meaning of the tax law by the Commissioner and have the force of law unless inconsistent with the statute. *Gunn v. Dallman*, 171 F.2d 36 (7th Cir. 1948). Regulations are binding on both the Government and the taxpayer. *Miller v. Commissioner of Internal Revenue*, 333 F.2d 400 (8th Cir. 1964).

Treasury Regulations on Income Tax (1954 Code) (26 C.F.R.) provide:

> § 1.501(c)(3)
>
> (c) OPERATIONAL TEST — (1) PRIMARY ACTIVITIES. — An organization will be regarded as

> "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

This Regulation defines the term "operated exclusively" and provides both a positive and a negative explanation of exempt activities. The Regulation provides an "either-or" situation. It demonstrates the fact that "operated exclusively" is an exclusive description of an organization which has included in its character none of the disqualifying characteristics described in the statute and Regulations. The Regulation separates the exempt and non-exempt.

Subsection (3) of the Regulation provides:

> (3) "ACTION" ORGANIZATIONS. — (i) An organization is *not operated exclusively* for one or more exempt purposes if it is an "action" organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph. (Emphasis added.)

Stated conversely, if an organization may be defined as an "action" organization, it is "not operated exclusively" for an exempt purpose. Christian Echoes, by Government's admission being "operated exclusively" for religious purposes, cannot be described as an "action" organization.

The Regulations clearly define an "action" organization. Subdivisions (ii), (iii), and (iv) provide:

> (ii) An organization is an "action" organization if a substantial part of its activities is attempting to

influence legislation by propaganda or otherwise . . . .

(iii) An organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office . . . .

(iv) An organization is an "action" organization if it has the following two characteristics: (a) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (b) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

If the activities of Christian Echoes fall within the definitions enumerated in (ii), (iii), or (iv) above, Christian Echoes would be an "action" organization and could not be described as "operated exclusively" for religious purposes.

The Regulation, then, provides that if a substantial portion of an organization's activity is to influence legislation or if an organization intervenes in any political campaign on behalf of a candidate for public office, it is not an organization operated exclusively for religious purposes under §501(c)(3). When Government admits that Christian Echoes is operated exclusively for religious purposes, Government necessarily admits, under its own Regu-

lations, that Christian Echoes does not devote a substantial portion of its activities to the carrying on of propaganda or otherwise attempting to influence legislation and that Christian Echoes has not participated in, or intervened in, any political campaign on behalf of any candidate for public office. Government thereby admits Christian Echoes is not an "action" organization and is immune from attacks alleging disqualification. Having made this admission, the issue raised by Government as to whether it may revoke Christian Echoes' exempt status because of political activity is moot. Probable jurisdiction for appeal to this Court is not shown.

Congress must be presumed to have created a constitutional statute. *Davies Warehouse Co. v. Bowles*, 321 U.S. 144 (1944). A court should construe legislation with a view toward bringing it within constitutional requirements. *American Power & Light Co. v. Securities & Exchange Commission*, 329 U.S. 90 (1946). The constitutional restrictions on defining religion, *United States v. Ballard*, 322 U.S. 78 (1944), are accepted by Government in its failure to define that term in its Regulations and by Government's admission that Christian Echoes was operated for exclusively religious purposes. Congress is presumed to have recognized the long standing absence of a definition of "religion" in the Regulations and thereby validated such Regulation promulgated by Government due to its long standing. *Boehm v. Commissioner of Internal Revenue*, 326 U.S. 287 (1946). The constitutional, historical, and logical interpretation of §501(c)(3) is that the prohibited political activity must fall outside the arena of the exempt purpose. Government has accepted this interpretation by

the terms of its Regulations. Section 501(c)(3) is constitutional in its content and purpose and when it is applied as intended by Congress, it does not have an unconstitutional effect. Government erroneously, and in violation of its own Regulations, administratively utilized that section to revoke the tax exempt status of Christian Echoes. Section 501(c)(3), properly applied to Christian Echoes, is not unconstitutional.

Christian Echoes respectfully states to this Court that the necessary requirements for this Court to asume jurisdiction under 28 U.S.C. 1252 are not present in this appeal and that this Court, therefore, does not have jurisdiction in this matter.

## BRIEF IN SUPPORT OF APPELEE'S MOTION TO AFFIRM

Christian Echoes expressly reserves its position that this Court is without jurisdiction to hear this appeal as set out in its Motion to Dismiss and Brief in Support of its Motion to Dismiss. In the alternative, and in the event this Court should find that it has jurisdiction over this appeal, Christian Echoes respectfully moves that this Court affirm the decision of the District Court without further proceeding in this appeal.

Christian Echoes was a tax exempt religious organization under the provisions of §501(c)(3) of the Internal Revenue Code of 1954. In 1966, the IRS revoked that tax exempt status and assessed taxes. Those taxes were paid and a suit was filed by Christian Echoes in the United States District Court for the Northern District of

Oklahoma for refund of taxes paid. The District Court found in favor of Christian Echoes. Government appealed to this Court under the provisions of 28 U.S.C. 1252 which authorizes direct appeal to this Court from a final judgment of a Court of the United States holding an Act of Congress unconstitutional in a civil action to which the United States is a party. Government alleges that the District Court found that §501(c)(3) of the Internal Revenue Code of 1954, as applied to Christian Echoes, was unconstitutional. Christian Echoes denies that allegation as set forth in its Brief in Support of its Motion to Dismiss.

Assuming, however, that §501(c)(3) is interpreted in such a fashion as to uphold the contention of Government that the District Court found it to be unconstitutional as applied to Christian Echoes, Christian Echoes moves that this Court affirm the decision of the District Court in that it is apparent from the record that Christian Echoes should prevail and that no purpose will be served by proceeding further in this appeal.

The District Court found the issues in favor of Christian Echoes on four basic grounds:

1. Christian Echoes meets the requirements of §501(c)(3) of the Internal Revenue Code of 1954 regardless of constitutional limitations upon the definition of religion by Government, that is, Christian Echoes is a corporation organized and operated exclusively for religious purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, and which

does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office;

2. Government exceeded its constitutional boundaries set by the First Amendment to the United States Constitution by determining that the alleged political activity disentitled Christian Echoes to exemption under §501(c)(3) when that activity was religious, and the revocation of that exemption is a damaging discrimination against Christian Echoes;

3. Government unconstitutionally discriminated against Christian Echoes and denied Christian Echoes due process guaranteed by the Fifth Amendment to the United States Constitution by consciously and purposefully selecting Christian Echoes from all religious organizations and revoking its tax exempt status while allowing other religious organizations similarly organized and operated to retain their tax exempt status;

4. Government denied Christian Echoes due process as guaranteed by the Fifth Amendment to the United States Constitution by consciously and purposefully disregarding its own published Regulations and procedures to be followed in revoking a previously exempt organization's tax exempt status.

Christian Echoes submits that a decision affirming any one of the above findings by the District Court is sufficient to find the issues in favor of Christian Echoes and affirm the decision of the District Court.

Christian Echoes fully complies, regardless of the requirements of the First Amendment and the free exercise

of religion clause thereof, with the requirement of §501(c)(3) even if this Court determines that Government was proper in determining if the activities of Christian Echoes are political and making a quantitative judgment thereon. The District Court specifically found that, considering the totality of the activity of Christian Echoes, any alleged political activity was an insignificant portion of the overall operation and activity of Christian Echoes. Government submitted to this Court an exhibit, referred to on page 3 of its Jurisdictional Statement, which was "a separately bound exhibit volume containing pertinent excerpts from many of the Government's exhibits, . . ." Government has lifted from certain specific publications of Christian Echoes statements which it alleges comprise political activity. Nowhere in that volume is any reference to the totality of Christian Echoes' activity, the number of weddings performed, choir practices held, sermons preached, revival meetings held, prayers offered, or baptisms performed by Christian Echoes' agents. The exhibit volume is incompetent as a matter to be considered by this Court as it is a document compiled with no intention whatsoever to indicate the totality of Christian Echoes' activities and what portion of those activities are allegedly political in nature.

Treasury Regulations on Income Tax §1.501(c)(3) provides the proper guideline for applying quantitative analysis to test the substantiality of prohibited activities allegedly engaged in by Christian Echoes. The IRS has ignored its published administrative procedures in that subparagraph (iv):

> (iv) . . . in determining whether an organization has such characteristics (prohibited political activity), all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

The District Court had the opportunity to hear each of the witnesses offered by Government and Christian Echoes, had the opportunity to observe each of the witnesses personally, and reviewed *in camera* the exhibits offered by Government and Christian Echoes and introduced into evidence, and found, rightfully so, by a preponderance of the evidence, that a substantial portion of Christian Echoes' total activities was not devoted to political purposes.

In a footnote at page 12 of its Jurisdictional Statement Government notes that it is difficult for Government to understand how the District Court could find the alleged political activities were merely incidental to the exercise of Christian Echoes' religion and to further find that neither the Court nor Government could constitutionally inquire into the activities of Christian Echoes to determine if they were religious or political. As indicated on page 7 of the Jurisdictional Statement of Government, one of the grounds of revocation was that Christian Echoes was not operated exclusively for religious purposes. The District Court found otherwise. From this determination that all of Christian Echoes' activities were for a religious purpose it is not difficult to conceive that the District Court found that any alleged political activities were incidental in nature to the exempt purpose of Christian Echoes and that those

activities were insubstantial in relation to the overall program of Christian Echoes.

What the District Court did find was that Government could not set up two separate categories, one religious and the other political, and examine the activities of Christian Echoes determining that some activities were religious and not political and that others were political and not religious. The District Court found that neither it nor Government could define religion for the purpose of calling certain activities political and not religious. No governmental body may define religion for the purposes of excluding certain activities from the enjoyment of tax exempt status.

The second issue found by the District Court in favor of Christian Echoes concerns the unconstitutional definition of religion discussed in detail in the above Brief in Support of Appellee's Motion to Dismiss. The free exercise clause of the First Amendment to the United States Constitution effectively prohibits the sovereign from denying a privilege to a religious organization based upon the nature of that organization's activities unless those activities are a clear and present danger. *West Virginia State Board of Education v. Barnett*, 319 U.S. 624 (1943). Such discrimination would amount to a denial, in relation to other religious organizations, of the free exercise of religion by Christian Echoes.

The third issue found by the District Court in favor of Christian Echoes is that other religious organizations similarly organized and operated and engaging in similar activities have been allowed to operate completely un-

fettered while the IRS singled out Christian Echoes for revocation. Such activity on the part of the Government is constitutionally unacceptable. Whatever may have been the intent of §501(c)(3) as adopted, if that section is applied by the governmental agency charged with its administration and thus representing the Government in a fashion so unequal and oppressive as to amount to a practical denial of equal protection of the laws, it is a violation of the Fifth Amendment to the Constitution. Although the section itself appears fair and impartial on its face, it was applied and administered by Government with an unequal hand making unjust and illegal discriminations between taxpayers in similar circumstances, material to their rights, and that denial of equal justice is within the prohibition of that Amendment. *Yick Wo v. Hopkins*, 118 U.S. 356 (1885).

Government does not have a license to destroy vindictively. Every citizen is entitled to the equal protection of the laws as they may be adopted and administered by Government throughout the land. It is not proper or lawful for Government to treat Christian Echoes in one fashion and other like organizations in another. The enforcement of §501(c)(3) in an uneven manner against only selected organizations without constitutionally acceptable bases for selection offends the American notion of justice and fair play. The IRS is charged with the collection of tax. It has no constitutional authority to apply its powers selectively without a proper reason for distribution between like citizens.

The District Court also found as a ground for the return of Christian Echoes' tax exempt status that Government had willfully violated established and published regu-

lations, procedures and directives promulgated by Government for the protection of both its rights and those of taxpayers. *United States v. Hefner*, 420 F.2d 809 (4th Cir. 1970). Government was required to scrupulously observe its rules, regulations and procedures which it established. Christian Echoes submitted uncontroverted evidence that such was not the case in the revocation of the exempt status of Christian Echoes. When Government failed to follow its rules, regulations and procedures, it was guilty of arbitrary procedure in finding Christian Echoes not entitled to tax exempt status. The Findings of Fact by the District Court amply support that conclusion of law.

One segment of the uncontroverted evidence was that the IRS in its search for ways to remove Christian Echoes' exemption made four audits, investigations and reinvestigations by two competent, experienced revenue agents. Four separate revenue agent's reports were prepared, each one unqualifiedly concluding that Christian Echoes at all times during the years involved operated within its authorized exemption. Despite this, the National Office of the IRS violated its administrative procedures as clearly enumerated in the Findings of Facts and Conclusions of Law promulgated by the learned trial judge.

Government proposes to this Court that the only issue which could be litigated in this matter was whether or not, in fact, Christian Echoes owed the tax for which it sought a refund. It is incomprehensible to Christian Echoes that Government would argue that the IRS, or any other governmental agency, could disregard the rights guaranteed by the Fifth Amendment in determining whether

taxes are, in fact, due and then come before the Court asserting the violation of those constitutional rights is insignificant in the matter on trial.

The decision of the District Court, assuming this Court has jurisdiction of this appeal, which Christian Echoes denies, should be affirmed by this Court without further proceeding in this matter. The District Court found four valid legal reasons that Christian Echoes was wrongfully denied its tax exempt status by Government in 1966 and that it was due a refund from Government of the taxes assessed for the periods in question. All of the appealable issues have been presented to this Court by the Jurisdictional Statement of Government and Motions and Briefs of Christian Echoes and it is possible, and Christian Echoes proposes, that this Court affirm the decision of the District Court at this time.

## CONCLUSION

Christian Echoes respectfully moves that this Court dismiss the instant appeal for the reason that the Court lacks jurisdiction at this time to hear the appeal or, in the alternative, that this Court affirm the decision entered in this matter by the United States District Court for the Northern District of Oklahoma.

Respectfully submitted,

LeROY BLACKSTOCK
CRAIG BLACKSTOCK
*Attorneys for Appellee*
Blackstock Joyce & Pollard
1304 Petroleum Club Building
Tulsa, Oklahoma 74119